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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 3080/2024, CRL.M.A. 25829/2024**

ARYAN BAJPAI

.....Petitioner

Through: Ms. Dolly Sharma, Advocate.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Tarang Srivastva, APP for the State.

Inspector B.D. Meena and Inspector Aishvir S., P.S.: Badarpur.

Mr. Rinku Kumar, next-of-kin of the deceased.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

20.02.2025

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By way of the present petition filed under section 439 read with section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks regular bail in case FIR No. 0079/2016 dated 28.02.2016 registered under section 302 of the Indian Penal Code, 1860 ('IPC') at P.S.: Badarpur, Delhi. Consequent upon completion of investigation, offences under sections 396/120-B/412/34 IPC and sections 25/27 of Arms Act, 1959 ('Arms Act') have been added *vide* chargesheet dated 31.05.2016.



2. Notice on this petition was issued *vide* order dated 29.08.2024; and since the petition was filed after 01.07.2024, it was treated as one under section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS').
3. Pursuant to notice being issued, Status Report dated 02.10.2024 has been filed on behalf of the State.
4. Nominal Roll dated 07.10.2024 has also been received from the concerned Jail Superintendent.
5. The court has heard Ms. Dolly Sharma, learned counsel appearing on behalf of the petitioner; as well as Mr. Tarang Srivastva, learned APP appearing on behalf of the State.
6. Furthermore, pursuant to intimation being served upon the next-of-kin of the deceased by the Investigating Officer ('I.O.'), Mr. Rinku Kumar, the next-of-kin, being the son of the deceased, has appeared in court today and submits that he has been pursuing the matter for the last about 09 year but has nothing to add *vis-à-vis* the present bail petition.
7. Ms. Sharma submits that PW-3, 7, 8 and 9 have not identified the petitioner in their court deposition; and only one solitary witness PW-20/Naresh Kumar, who claims that he was working as a cashier at the Delhi Entry Point Toll Plaza, Badarpur, New Delhi has identified the petitioner as having been present at the spot. In this behalf, learned counsel relies on the witness statements filed on record under Index dated 19.02.2025 in compliance of a direction contained in order dated 17.01.2025.



8. It is argued, that first and foremost, PW-20 has supposedly recollected the face and identified the petitioner in his statement recorded in court on 04.05.2024 in relation to an alleged incident of 2016, *i.e.* after about 08 years. It is further pointed-out that PW-20 says that he knew 02 of the 04 boys who boarded a motorcycle and fled; and that he recognises 02 of the said 04 boys because they were tenants in a building opposite to where he used to reside; and another boy - the present petitioner - who *used to visit* the other 02 boys living his place.
9. Ms. Sharma submits, that apart from the incredulity of PW-20 having identified the petitioner after 08 long years, merely because the petitioner used to allegedly visit the other 02 boys who were living opposite the petitioner, the only role ascribed to the present petitioner is that he had bolted the room in which certain staff members of the toll plaza were resting, so that they would not intervene in the offence that the other boys were allegedly committing.
10. Learned counsel also submits that no recovery has been made from the petitioner.
11. Ms. Sharma has also drawn attention of the court to the petitioner's nominal roll, to submit that the petitioner has clean antecedents; his jail conduct has been 'satisfactory'; and that he has also been granted interim bail on 06 previous occasions, in addition to having been released on interim bail under the HPC Guidelines during the then prevailing pandemic.
12. Counsel argues, that apart from the serious doubt as to his identity and presence at the spot, the petitioner has already suffered more than 06



years of judicial custody as an undertrial in a case in which only 23 out of the 50 prosecution witnesses have so far been examined; and the trial is bound to take a very long time to complete.

13. Upon being queried, Ms. Sharma submits, that all public witnesses in the matter have deposed and only official witnesses remain to depose before the learned trial court.
14. On the other hand, opposing the grant of regular bail, learned APP draws attention to section 396 of the IPC, to submit that if a homicide is committed in the course of committing dacoity, every person who was involved in the commission of dacoity is liable to be punished with death or life imprisonment, or with rigorous imprisonment of upto 10 years, apart from being liable for fine.
15. Mr. Srivastva submits therefore, that the petitioner is answerable not just for the offence of dacoity but for the offence of committing dacoity with murder under section 396 of IPC.
16. Upon an overall conspectus of the facts and circumstances of the case, in particular the fact that the petitioner has suffered judicial custody for more than 06 years as an undertrial in a case where only 23 out of the 50 prosecution witnesses have so far been examined and the trial is bound to take a long time to conclude; and that the petitioner has been identified by only 01 prosecution witnesses, that too after a delay of about 08 years, this court is persuaded to allow the present petition and to admit the petitioner - ***Aryan Bajpai s/o Pradeep Bajpai*** – to *regular bail* pending trial, subject to the following conditions :



- 16.1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Rs. Twenty-five Thousand Only) with 02 sureties in the like amount from a family member, to the satisfaction of the learned trial court;
- 16.2. The petitioner shall furnish to the Investigating Officer, a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 16.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 16.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial; and
- 16.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the Investigating Officer in writing.
17. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.
18. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.



19. A copy of this order be sent to the concerned Jail Superintendent *forthwith*, for information and compliance.
20. The petition stands disposed-of in the above terms.
21. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 20, 2025/ak